

Response to Comments

Proposed Memorandum of Understanding between the Lahontan Water Board and Tahoe Regional Planning Agency for Vegetation Management Activities

Prepared by Lahontan Water Board Staff
September 24, 2008

Section 1. INTRODUCTION

The California Regional Water Quality Control Board, Lahontan Region (Water Board) is considering the adoption of a resolution waiving the filing of a report of waste discharge and waste discharge requirements for discharges associated with vegetation management activities in the Lake Tahoe Region that are effectively regulated by the Tahoe Regional Planning Agency (TRPA), and authorizing the Water Board's Executive Officer to enter into a Memorandum of Understanding (MOU) with the Executive Director of the TRPA. The MOU will designate the TRPA as the lead agency for permitting, review, and enforcement for vegetation management activities in the Lake Tahoe Region, with certain conditions.

This document summarizes public and agency comments received on this proposed project. The draft waiver, MOU and associated environmental documents were circulated for a 30-day public review and comment period from August 15-17 through September 15-17, pursuant to California Code of Regulations, title 14, section 15072.

Six comment letters were received. Water Board staff reviewed each letter, and assigned a number to each substantive comment. Letters 1 and 2 contained substantially identical comments; therefore, responses to these letters are combined. Copies of each comment letter, with associated comment numbers, are provided in Attachment 1.

Section 2. COMMENT LETTERS AND AUTHORS

1. Greg McKay, President, Tahoe Basin Fire Chiefs
2. Mary Huggins, Division Chief, CAL FIRE
3. George Gentry, Executive Officer, Board of Forestry and Fire Protection
4. Terri Marceron, Forest Supervisor, USFS-Lake Tahoe Basin Management Unit
5. Michael Graf, Sierra Forest Legacy; Jennifer Quashnick, Sierra Forest Legacy/Sierra Club; Carl Young, League to Save Lake Tahoe
6. Jack Landy, Lake Tahoe Basin Coordinator, US Environmental Protection Agency

Section 3. RESPONSES TO COMMENTS

1. Greg McKay, President Tahoe Basin Fire Chiefs (Letter Code TBFC); Mary Huggins, Division Chief, CAL FIRE (Letter Code CAL FIRE).

TBFC-1;
CAL FIRE-
1

We disagree that the MOU was developed in violation of the Fire Commission Report's recommendations. It is important to note that the findings and recommendations contained in the Fire Commission report are non-regulatory *recommendations*.

Regarding CAL FIRE's participation in MOU development: It is incorrect to state that CAL FIRE was not contacted by either the Water Board or TRPA to participate in the development of the MOU. CAL FIRE representatives participated in several meetings hosted by Water Board staff to gain input on MOU development, including the June 30, 2008 early consultation/scoping meeting, and the July 23, 2008 Water Board subcommittee meeting to discuss comments received on the MOU during early consultation. Additionally, as evidenced by its submittal of comments here, CAL FIRE participated in the 30-day public review and comment period of the proposed waiver and MOU, conducted pursuant to 14 Cal. Code Regs. section 15073(a). Together, these opportunities exceed those required for public review and comment under the California Environmental Quality Act (CEQA).

Further, the Fire Commission's recommendation 29 does not state that the director of CALFIRE should develop the MOU; rather, that the director should be empowered to monitor, and report to the Governor the progress on the MOU. Governor Schwarzenegger's May 27, 2008 proclamation ordered that the Secretaries for the Resources Agency (of which CAL FIRE is a part) and the California Environmental Protection Agency monitor and report on the progress of the MOU to the Governor by January 1, 2009.

Recommendation 29 also states that the final MOU should be submitted to, and be subject to, the prior review and comment by the Director of CALFIRE. The proposed MOU was circulated for public and agency comment and review for 30 days, from August 15-17 through September 15-17, 2008, pursuant to CEQA public review requirements, and consistent with the Fire Commission's recommendations.

TBFC-2;
CAL FIRE-
2

The definition of "vegetation management activities" is included in the MOU to describe what types of activities are subject to the MOU conditions, not to dictate what types of activities can occur on timberlands in California. Further discussion with the Board of Forestry's Executive Officer clarified this issue, and concluded that there was no need to change the definition in the MOU.

We disagree that BOF and CAL FIRE have exclusive authority over timber operations. CAL FIRE is the lead agency responsible for regulating timber harvesting under the California Forest Practice Rules (FPRs). The State Water Board, State Board of Forestry, and CAL FIRE entered into a Management Agency Agreement (MAA) in 1988 for overseeing water quality protection on timber harvest plans. Under the MAA, the Regional Water Board is a responsible agency and plays an advisory role. Further, the TRPA's authority over matters relating, but not limited to, soil erosion control, protection of stream character and water quality, flood control, stand density control, location and grades of roads and skid trails, and other timber harvest activities is recognized in the Z'Berg-Nejedly Forest Practice Act, section 4516.

The Water Board is responsible for enforcing the Porter-Cologne Water Quality Control Act as well as the Water Quality Control Plan for the Lahontan Region (Basin Plan). The Act and the Basin Plan prohibit the discharge of materials that adversely affect the beneficial uses of the waters of the State, including those associated with timber harvest and vegetation management activities. The Water Board has the authority to take enforcement action, ranging from staff level enforcement actions to issuing administrative civil liabilities (fines) against persons who violate the Act or the Basin Plan. Timber harvesting activities have the potential to impact waters of the State, and as such, the Water Board has a statutory obligation to regulate such discharges (including by issuing a waiver of waste discharge requirements). The Water Boards regulate possible water quality impacts of timber harvest activities by participating in the CAL FIRE timber harvesting review processes and by exercising their independent authority granted under the Porter-Cologne Water Quality Control Act.

TBFC-3; CAL FIRE- 3	<p>The definition is inclusive of fuel reduction work that may occur in the Tahoe Basin. This is consistent with recommendation 26 of the Fire Commission, which states, "LRWQCB transfer to the TRPA all responsibilities relating to fuel reduction projects" Therefore, permitting for fuel reduction work will occur under the authority of the TRPA.</p> <p>However, the MOU contains a provision that project proponents may choose to submit an application to the Water Board, rather than the TRPA. Because the criteria and conditions of the Timber Waiver will not automatically apply to projects in the Tahoe Basin, the exemptions in the Waiver will not automatically apply either. TRPA's, rather than the Water Board's, permitting process will dictate which projects are exempt.</p>
TBFC-4; CAL FIRE- 4	<p>The MOU contains a provision for the TRPA to request that the Water Board assume responsibility for permitting or provide assistance in the event of staff resource limitations. Also, the MOU stipulates that each agency must dedicate staff to adequately implement the provisions of the MOU.</p> <p>Further, the addition of staff to TRPA is outside the scope of Lahontan's mandate or authority. We suggest that funding or staffing concerns be elevated according to the process outlined in the Fire Commission's recommendation 23, regarding TRPA budget changes.</p>
TBFC-5; CAL FIRE- 5	<p>We disagree that the "triggers" in the MOU render it ineffective. Paragraph No. 9 in the MOU specifies conditions where the lead permitting agency (typically TRPA) will consult the other agency during the application process. The nature of such consultation is limited to technology sharing, discussion of BMPs and appropriate control and mitigation measures. The MOU clearly states that such consultation will occur in a manner that does not alter the normal permitting time, and that lack of timely response by either agency will not delay project permitting. This approach is entirely consistent with the concept of permit streamlining, as well as fostering communication as recognized in Finding 10 of the Fire Commission Report, which states "there is a need to improve communications between the Tahoe Regional Planning Agency (TRPA) and the States of California and Nevada and to provide enhanced oversight by the two states."</p> <p>The conditions outlined in Paragraph No. 9 of the MOU do not automatically trigger permitting or project oversight by the Water Board; rather, they are consultation triggers only. However, as a matter of law, the MOU cannot and does not limit the authority of either the Water Board or the TRPA to ensure compliance with its environmental standards and regulations, including requiring a project proponent to submit a permit application, or to take enforcement action.</p>
TBFC-6; CAL FIRE- 6	<p>The proposed language is not appropriate for inclusion in the MOU. The proposed MOU is between the Water Board and TRPA. If CAL FIRE has an existing MOU with TRPA, the conditions of that MOU apply. If an MOU is not in place between TRPA and CAL FIRE, then CAL FIRE projects are subject to TRPA's regulations, including the need for pre-approval field review, and pre- and post-harvest review, as specified in TRPA's Code of Ordinances, section 71.4.l(1)(a-g).</p>
TBFC-7; CAL FIRE- 7	<p>Please see response TBFC-2.</p>
TBFC-8; CAL FIRE- 8	<p>Please see response TBFC-2.</p>
TBFC-9; CAL FIRE- 9	<p>Water Board staff assumes this comment is referring to Paragraph No. 11 in the proposed MOU:</p> <p>"By February 1 of each year, each agency must submit to the other agency a list of all vegetation management activities which that agency authorized to proceed under this MOU during the preceding calendar year, and provide as appropriate, activity details including but not limited to: project proponent, location, and any compliance issues associated with the project. The list of projects maintained by the Tahoe Fire and Fuels Team (TFFT) can be used to satisfy this provision."</p>

	This obligation is between the Water Board and the TRPA, and is not a requirement placed on project proponents, and as such, does not represent a Timber Waiver application requirement for hand thinning projects. Further, this requirement is consistent with similar requirements in MOUs currently in place between TRPA and several Fire Districts (see, for example, the MOUs between TRPA and the Tahoe Douglas and Lake Valley Fire Protection Districts).
TBFC-10	Comments noted. Our responses outlined above support that the proposed MOU is consistent with the Fire Commission's recommendations, Governor Schwarzenegger's proclamation, state and federal water quality protection regulations, and is in the public interest.
2. George Gentry, Executive Officer, Board of Forestry and Fire Protection (Letter Code BOF)	
BOF-1	Please see response TBFC-1.
BOF-2	<p>The definition of "vegetation management activities" is included in the MOU to describe what types of activities are subject to the MOU conditions, not to dictate what types of activities can occur on timberlands in California. Further discussion with the Board of Forestry's Executive Officer clarified this issue, and concluded that there was no need to change the definition in the MOU.</p> <p>Regarding the statement that CAL FIRE has exclusive authority over timber operations, please see response TBFC-2.</p>
BOF-3	Please see response TBFC-4.
BOF-4	Comment noted. The proposed MOU, Paragraph No. 1, states, "TRPA will have responsibility for reviewing vegetation management activities, issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. This includes exempt and qualified exempt activities, as defined in the TRPA Code of Ordinances."
BOF-5	<p>We disagree that these paragraphs (Nos. 4, 5, and 8) render the MOU ineffective in its intent to streamline permitting. Paragraph No. 4 states that the Water Board will not normally issue a permit, but may be involved in consultation and coordination with TRPA staff. The nature of such consultation is described as technology sharing, discussion of BMPs and appropriate control and mitigation measures. The MOU clearly states that such consultation will occur in a manner that does not alter the normal permitting time, and that lack of timely response by either agency will not delay project permitting. This approach is entirely consistent with the concept of permit streamlining, as well as fostering communication as recognized in Finding 10 of the Fire Commission Report, which states "there is a need to improve communications between the Tahoe Regional Planning Agency (TRPA) and the States of California and Nevada and to provide enhanced oversight by the two states."</p> <p>Paragraph No. 5 provides that the Water Board may use its regulatory authority when requested by TRPA or as necessary to ensure water quality protection. This is consistent with the California Water Code (CWC) and the Clean Water Act (CWA), which have obligated the Water Board to protect water quality using its regulatory authority. This authority cannot be legally relinquished or waived.</p> <p>Paragraph No. 8 provides that the Water Board may use its authority to issue a permit for a project where an environmental document has identified water quality impacts that are not avoided, lessened, and/or mitigated to a level of insignificance. This item is necessary to emphasize that the environmental document prepared to support adoption of the proposed MOU and waiver <u>did not</u> analyze projects that may result in potentially significant impacts to the environment. The Water Board would have had to prepare an EIR which could not be accomplished with the time allotted, nor within the budget available. At the June 2008 early consultation/scoping meeting, and again during the July 23, 2008 Water Board subcommittee meeting, it was clearly articulated that the scope of the MOU must be limited to that which could be evaluated under a Mitigated Negative Declaration. Projects that would have significant environmental impacts could not be considered under this</p>

	proposed MOU.
BOF-6	Please see response TBFC-6.
BOF-7	Please see response TBFC-2 and BOF-2.
BOF-8	Comment noted. Please see response TBFC-1.
3. Terri Marceron, Forest Supervisor, USFS-Lake Tahoe Basin Management Unit (Letter Code LTBMU)	
LTBMU-1	The MOU proposes that the TRPA would be the primary permitting authority for vegetation management activities in the Lake Tahoe Region. This is consistent with recommendation 26 of the Fire Commission, which states, "LRWQCB transfer to the TRPA all responsibilities relating to fuel reduction projects" Therefore, permitting for fuel reduction work will be done under the authority of the TRPA. However, the CWC and the CWA have obligated the Water Board to protect water quality using its regulatory authority. This authority cannot be legally relinquished or waived, and as such, the MOU contains provisions specifying that the Water Board retains its regulatory authority, consistent with state and federal water quality protection statutes.
LTBMU-2	Please see response to LTBMU-1.
LTBMU-3	We disagree that the MOU should reference specific duplicative authorities or regulations. The Initial study describes that the Water Board and the TRPA are both responsible for protecting water quality and beneficial uses of waters of the State within the Lake Tahoe Region by regulating activities which may have an adverse effect on these resources. The TRPA and the Water Board are mandated and authorized to provide the same level of protection for water quality in the Tahoe Basin, and do so through virtually the same regulatory mechanisms – adoption of water quality standards, waste discharge prohibitions, and taking enforcement actions to attain and maintain federal, state and local water quality standards, and beneficial uses. The specific procedural approaches used by each agency to meet these objectives may vary, but the regulatory goals are the same. The MOU proposes to meet these mutual goals in a more effective manner.
LTBMU-4	<p>The definition is inclusive of fuel reduction work that may occur in the Tahoe Basin. This is consistent with recommendation 26 of the Fire Commission, which states, "LRWQCB transfer to the TRPA all responsibilities relating to fuel reduction projects" This definition is included in the MOU to describe what types of activities may be proceed under the MOU, not to dictate what types of activities can occur within the project area.</p> <p>We understand that many of the LTBMU's projects have multiple goals, including fuel reduction, forest health and stream restoration. In some cases, a project may fall within the scope of the proposed vegetation MOU, but still require additional permitting, such as a 401 water quality certification and/or a construction NPDES storm water permit. The proposed MOU only covers vegetation management activities. Other activities that may involve greater than one acre of ground disturbance may require the LTBMU to acquire a construction NPDES Storm Water Permit or a Section 401 Water Quality Certification from the Water Board (if the Army Corps of Engineers or other federal agency permit is required). We cannot transfer NPDES permit responsibilities or 401 Water Quality Certification authorities to TRPA .</p>
LTBMU-5	TRPA is the primary agency responsible for permitting and reviewing fuel reduction projects under the terms of the proposed waiver and MOU, consistent with the Fire Commission's recommendations. Paragraph No. 3 in the MOU is provided as an option for project proponents to apply to the Water Board for vegetation management projects if they so choose. It is not an additional permitting requirement.
LTBMU-6	Paragraph No. 4 states that the Water Board will not normally issue a permit, but may be involved in consultation and coordination with TRPA staff. The nature of such consultation is described as

	<p>technology sharing, discussion of BMPs and appropriate control and mitigation measures. The MOU clearly states that such consultation will occur in a manner that does not alter the normal permitting time, and that lack of timely response by either agency will not delay project permitting. This approach is entirely consistent with the concept of permit streamlining, as well as fostering communication as recognized in Finding 10 of the Fire Commission Report, which states "there is a need to improve communications between the Tahoe Regional Planning Agency (TRPA) and the States of California and Nevada and to provide enhanced oversight by the two states."</p> <p>The Water Board may issue a permit when requested by TRPA or as necessary to ensure water quality protection. This is consistent with the CWC and the CWA, which have obligated the Water Board to protect water quality using its regulatory authority. This authority cannot be legally relinquished or waived.</p> <p>The Water Board may also use its authority to issue a permit for a project where an environmental document has identified water quality impacts that are not avoided, lessened, and/or mitigated to a level of insignificance. This item is necessary to emphasize that the environmental document prepared to support adoption of the proposed MOU and waiver <u>did not</u> analyze projects that may result in potentially significant impacts to the environment. The Water Board would have had to prepare an EIR which could not be accomplished with the time allotted, nor within the budget available. At the June 2008 early consultation/scoping meeting, and again during the July 23, 2008 Water Board subcommittee meeting, it was clearly articulated that the scope of the MOU must be limited to that which could be evaluated under a Mitigated Negative Declaration. Projects that would have significant environmental impacts could not be considered under this proposed MOU.</p>
LTBMU-7	Please see response LTBMU-6.
LTBMU-8	We disagree that Paragraph No. 7 is an example of inconsistency and duplication. Under the terms of the MOU, the permitting agency typically would be the TRPA, except under the conditions outlined in response LTBMU-6, above. The important point is that <u>either</u> TRPA or the Water Board would issue a permit for vegetation management activities, rather than both agencies issuing permits for the same activity, as the current regulatory approach dictates.
LTBMU-9	We will revise the term in the MOU to "pre-project."
LTBMU-10	<p>The Water Board may also use its authority to issue a permit for a project where an environmental document has identified water quality impacts that are not avoided, lessened, and/or mitigated to a level of insignificance. This item is necessary to emphasize that the environmental document prepared to support adoption of the proposed MOU and waiver <u>did not</u> analyze projects that may result in potentially significant impacts to the environment. The Water Board would have had to prepare an EIR, which could not be accomplished with the time allotted, nor within the budget available. At the June 2008 early consultation/scoping meeting, and again during the July 23, 2008 Water Board subcommittee meeting, it was clearly articulated that the scope of the MOU must be limited to that which could be evaluated under a Negative Declaration. Projects that would have significant environmental impacts could not be considered under this proposed MOU.</p> <p>If a project needs approval from the Water Board, it must have appropriate CEQA review. The Water Board is prepared to utilize the most streamlined process to satisfy this requirement, including the preparation and use of a single environmental document or use of a NEPA document that incorporates the required CEQA analysis. The Fire Commission's recommendations cannot negate CEQA requirements.</p> <p>The MOU does not specifically describe the TRPA's environmental review process (nor does it describe the CEQA review process) because both TRPA and the Water Board's environmental review processes cannot be changed by this MOU.</p>
LTBMU-11	Paragraph No. 9 in the MOU specifies conditions where the lead permitting agency (typically TRPA) will consult the other agency during the application process. The nature of such consultation is limited to technology sharing, discussion of BMPs and appropriate control and mitigation measures.

	<p>The MOU clearly states that such consultation will occur in a manner that does not alter the normal permitting time, and that lack of timely response by either agency will not delay project permitting. This approach is entirely consistent with the concept of permit streamlining, as well as fostering communication as recognized in Finding 10 of the Fire Commission Report, which states "there is a need to improve communications between the Tahoe Regional Planning Agency (TRPA) and the States of California and Nevada and to provide enhanced oversight by the two states."</p> <p>The conditions outlined in Paragraph No. 9 of the MOU do not automatically trigger permitting or project oversight by the Water Board; rather, they are consultation triggers only. However, as a matter of law, the MOU cannot and does not limit the authority of either the Water Board or the TRPA to ensure compliance with its environmental standards and regulations, including requiring a project proponent to submit a permit application, or to take enforcement action.</p>
LTBMU-12	<p>We disagree. This requirement is placed on the Water Board and the TRPA, not on the project proponents, and is a standard and reasonable practice to ensure effective interagency communication.</p> <p>The existing Timber Waiver and any amendments to it would only be applicable if the Water Board regulated the project. This could occur: pursuant to Paragraph No. 3, if the applicant applied to the Water Board; pursuant to Paragraph No. 2, if the TRPA referred the project to the Water Board; pursuant to Paragraph No. 8, since the waiver of waste discharge requirements that is a part of the MOU does not include such projects; pursuant to Paragraph No. 13, which the Water Board does not anticipate using.</p>
LTBMU-13	Comment noted. The proposed MOU and waiver designate TRPA as the primary permitting authority for vegetation management activities in the Lake Tahoe Region.
LTBMU-14	The proposed revised Timber Waiver will be circulated for public review in early October 2008, prior to the Water Board's public meeting to consider the MOU. The Water Board had anticipated circulating both documents together; however, due to work efforts on other priorities, including this MOU, and the limit on overtime, the circulation of the revised Timber Waiver was delayed.
LTBMU-15	Please see response LTBMU-4.
LTBMU-16	Comment noted. Our responses outlined above demonstrate that the proposed MOU is consistent with the Fire Commission's recommendations, Governor Schwarzenegger's proclamation, state and federal water quality protection regulations, and is in the public interest.
4. Michael Graf, Sierra Forest Legacy; Jennifer Quashnick, Sierra Forest Legacy/Sierra Club; Carl Young, League to Save Lake Tahoe (Letter Code SFL et al)	
SFL et al-1	<p>The proposed project involves waiving the requirement to file a report of waste discharge and waste discharge requirements for vegetation management activities that are effectively regulated by the TRPA. Regulation of such activities pursuant to the waiver will occur according to the terms of the Vegetation Management MOU, and TRPA's Code of Ordinances. It is not accurate to describe the project as a "wholesale transfer" of Lahontan's regulatory authority to TRPA. Under the terms of the proposed waiver and MOU (the proposed project), and as required by the California Water Code, the Lahontan Water Board retains ultimate responsibility for implementation and enforcement of its Basin Plan requirements.</p> <p>The Water Board and the TRPA are both responsible for protecting water quality and beneficial uses of waters of the State within the Lake Tahoe Region by regulating activities which may have an adverse effect on these resources. The TRPA is mandated by Public Law (P.L.) 96-551 (the Tahoe Regional Planning Compact), to protect the quality of water at Lake Tahoe and has adopted thresholds and ordinances aimed specifically at protecting and improving water quality. The TRPA is the designated water quality planning agency under Section 208 of the Clean Water Act. The TRPA's "208 Plan" was certified by the states of California and Nevada and the USEPA, and establishes control measures to protect water quality including a tree removal permit system, stream</p>

environment zone and wetland protection policies, vegetation protection and management provisions, prohibitions against fill in 100-year floodplains and permanent disturbance in stream environment zones, and use of Best Management Practices (BMPs).

The TRPA's Regional Plan also provides for attaining and maintaining the strictest water quality standards established by federal or state agencies as required by Article 5, section 5(d) P.L. 96-551, and the TRPA Code of Ordinances incorporates water quality standards as equally restrictive as those contained in the Lahontan Basin Plan. In 1989, as part of its certification of TRPA's 208 plan, the State Board directed the Lahontan Water Board to incorporate the most appropriate provisions of the 208 plan into the Lahontan Basin Plan, and this was done in the mid-1990s. This demonstrates that the regulatory provisions for water quality control between the two agencies are essentially the same. Additional detail will be added to the Initial Study to discuss the similarities in regulatory provisions for vegetation management activities.

In addition, Chapter 5 of the Basin Plan (applicable to the Lake Tahoe Region) recognizes the implementation of the water quality control programs discussed in that chapter is a bi-state, interagency effort. As stated in Chapter 5 of the Basin Plan, "many of the control measures can best be implemented by local governments or the TRPA" This waiver and MOU are consistent with that philosophy. The Basin Plan also recognizes that the Water Board and TRPA implement their water quality plans in a complementary manner, and MOUs are an effective tool to increase coordination and avoid duplication of effort (page 5-4).

As such, the Water Board proposes to rely on the parallel authority of the TRPA permit and oversee vegetation management activities in the project area. TRPA has the legal mandate and statutory authority to perform these functions, as described above and in the waiver (findings 7 and 8). The waiver and MOU are conditional, in that projects must be effectively regulated by the TRPA, including issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. If the Water Board finds that projects proceeding under the waiver and MOU are not effectively regulated, the Water Board has several options: 1) the Executive Officer can recommend that the Water Board adopt Waste Discharge Requirements for any of the types of activities, or individual projects, identified in the MOU; 2) the Executive Officer can require that a project proponent seek coverage under the Lahontan Timber Waiver; or 3) the waiver and MOU can be terminated. Further, the waiver and MOU do not limit the authority of either agency to ensure compliance with its environmental standards or to take enforcement action.

The MOU contains several safeguards to ensure that the MOU is effective in meeting its objectives. These safeguards include: notification requirements if a third party violates the term of any permit or project authorization; "triggers" for more complex projects that may benefit from interagency consultation; yearly information exchange regarding the projects that each agency has authorized to proceed under the MOU; and twice yearly communication, training, and technical review to discuss any problems, issues or opportunities encountered during the administration and implementation of the MOU. These safeguards provide opportunities for adaptive management and communication necessary to ensure the objectives of the MOU are met, and that projects are effectively regulated under the waiver and MOU.

The waiver does not contain specific details on TRPA's procedural approach to fulfilling its mandate to protect water quality, or on how TRPA intends to regulate vegetation activities in the future. Although we do not believe this level of detail is needed to demonstrate the legal validity or environmental protectiveness of the waiver and MOU, it is the Water Board's understanding the TRPA's basic procedural approach will protect water quality and not adversely affect beneficial uses. The Water Board would not have sought an MOU with TRPA if it believed that TRPA would not have an adequate procedural approach to protect water quality. This belief is further supported by the effectiveness of the existing 2003 MOU between the Water Board and TRPA, which outlines primary and secondary permitting and review responsibilities for construction, BMP retrofit, and other projects. In addition, as noted above, the Water Board believes that there are several safeguards to ensure the MOU is effective. And finally, the Water Board has many options and opportunities to ensure projects are effectively regulated.

	<p>The TRPA and the Water Board are mandated and authorized to provide the same level of protection for water quality in the Tahoe Basin, and do so through virtually the same regulatory mechanisms – adoption of water quality standards, waste discharge prohibitions, and taking enforcement actions to attain and maintain federal, state and local water quality standards, and beneficial uses. The specific procedural approaches used by each agency to meet these objectives may vary, but the regulatory goals are the same.</p> <p>TRPA's 208 plan (which is implemented by the Regional Plan, Code of Ordinances and other documents) has been certified by the states of California and Nevada and the USEPA as meeting applicable state and federal requirements for water quality protection. The Regional Plan outlines environmental thresholds, goals, and policies, and a code of ordinances to attain the thresholds. Our conditional reliance on TRPA's regulatory program is appropriate and protective of water quality. Sufficient safeguards are outlined in the waiver and MOU to provide feedback mechanisms verifying the adequacy of the MOU to meet its objectives.</p>
SFL et al-2	It is important to note that while the specific waiver requirements for certain projects will not be applied to those projects that are effectively regulated by the TRPA, such projects are not exempt from compliance with all applicable water quality regulations.
SFL et al-3	The Tahoe Fire Fuels Team (TFFT) has set up an incident command structure to help facilitate the planning, permitting and implementation of fuel reduction projects. The TFFT is not tasked with making regulatory changes, but rather with improving coordination, communication and knowledge transfer. Development of checklists and other tools to facilitate these projects is part of the adaptive management process and by itself will not result in TRPA changing its rules or regulations concerning water quality protection.
SFL et al-4	Please see response SFL et al-1. It is not accurate to describe the proposed project as an "abandonment" of our regulatory authority.
SFL et al-5	see response SFL et al-1. It is not accurate to describe the project as an "unconditional transfer" of permitting authority to TRPA.
SFL et al-6	<p>The proposed project is similar to that proposed during the early consultation (scoping) period.</p> <p>The early consultation discussed two separate actions (revision of the existing Timber Waiver, and development of the Vegetation Management MOU). Changes to the existing Timber Waiver are being developed and will be considered as a separate action and project under a separate CEQA document. This proposed MOU is not affected by the Timber Waiver as it exists or may be revised.</p>
SFL et al-7	see response SFL et al-1.
SFL et al-8	<p>The proposed project is consistent with California Water Code section 13269 regarding monitoring requirements. TRPA, as outlined in its Code of Ordinances (Chapter 71, section 71.4.c. viii and 71.4.i) conducts or requires monitoring for tree removal projects that may pose a threat to water quality, including those proposing innovative equipment use in SEZs, and those involving substantial tree removal. These policies are consistent with the requirements of CWC section 13269, which provides that "monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions, and the state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality."</p> <p>We will add detail to the Initial Study to clarify that the waiver and MOU are consistent with CWC section 13269, regarding monitoring requirements.</p>
SFL et al-9	See response SFL et al-1. The proposed project is consistent with Basin Plan as outlined in therein.

SFL et al-10	We agree that both Lahontan and TRPA are committed to achieving Basin Plan objectives through the adoption of TMDLs. However, it is incorrect to state that the current TMDL process assumes a load allocation for timber and other vegetation management activities" It is anticipated that the Lake Tahoe TMDL (which has not been completed or adopted), will not contain load allocations for timber harvest activities, nor does it assume a level of protection based on current 2007 Timber Waiver conditions. If such load allocations are included in the adopted TMDL, this MOU and associated waiver of waste discharge requirements would need to be reviewed to determine if changes were needed to ensure that projects were appropriately implemented. However, it would be inappropriate to delay consideration of this MOU to incorporate regulations that will not be considered for at least a year.
SFL et al-11	TRPA's Code of Ordinances contains waste discharge prohibitions and exemption criteria for disturbance in SEZs that are the same criteria as those contained in the Lahontan Basin Plan. Additional detail will be added to the Initial Study to discuss the similarities in regulatory provisions for vegetation management activities.
SFL et al-12	<p>The proposed project requires the TRPA to implement its regulatory program as necessary to ensure compliance with permits and applicable regulations. Because the TRPA and the Water Board are mandated and authorized to provide the same level of protection for water quality in the Tahoe Basin, and do so through virtually the same regulatory mechanisms – adoption of water quality standards, waste discharge prohibitions, and taking enforcement actions to attain and maintain federal, state and local water quality standards, and beneficial uses, the waiver is consistent with beneficial use protection offered by the existing (2007) Timber Waiver.</p> <p>Regarding monitoring requirements, please see response SFL et al-8.</p>
SFL et al-13	The TRPA Compact does not require that the TRPA update Thresholds every 5 years. The Regional Plan Goals and Policies (Monitoring and Evaluation Subelement) and the Code of Ordinances, Chapter 32, do require TRPA to evaluate the Thresholds and the Regional Plan package at least every five years See Attachment C of TRPA Goals and Policies for Resolution 82-11). Projects permitted by TRPA shall comply with all TRPA Goals and Policies, Code of Ordinances and Threshold requirements.
SFL et al-14	It is incorrect to state that TRPA has no plan for meeting its Basin Plan requirements. Its current plan requires compliance with state water quality standards, the 208 Water Quality Plan and attainment of TRPA Thresholds.
SFL et al-15	See response SFL et al-1. The permitting procedures and substantive conditions are in place, as described within TRPA's Code of Ordinances. It is incorrect to state the Lahontan is "giving up" its regulatory authority (See response SFL et al-1). The proposed project does not prevent updates or revisions to any policies or procedures that govern how TRPA regulates vegetation management activities, but it does allow the Water Board to exercise its regulatory authority if it finds any revisions are not in compliance with the Basin Plan or applicable regulations.
SFL et al-16	See response SFL et al -1. The TRPA is not "obtaining authority" through implementation of the proposed project. TRPA and the Water Board have parallel authority to protect water quality in the Lake Tahoe Basin, and in the interest of effective use of resources, we are proposing to rely on TRPA to effectively regulate vegetation management activities. Under the terms of the MOU, and consistent with state and federal water quality statutes, the Water Board does not relinquish any of its regulatory authority.
SFL et al-17	<p>We disagree that analyzing the potential environmental impacts of the proposed project through a Negative Declaration violates CEQA. As stated in response SFL et al -2, while the specific waiver requirements for certain projects may not be applied to those projects that are effectively regulated by the TRPA, such projects are not exempt from compliance with all applicable water quality regulations. All persons proposing to discharge waste under the proposed project must comply with Basin Plan requirements.</p> <p>Regarding information on how TRPA will regulate projects, see response SFL et al-1.</p>

SFL et al-18, 19, 20	We disagree that detailed information such as that outlined in the comment letter is needed.
SFL et al-21	<p>It is unclear what results of implementing the 2003 and 2007 Timber Waivers are requested. The 2003 Timber Waiver did not contain monitoring requirements, as monitoring was not mandated for waivers under the CWC at the time of that waiver's adoption. The 2007 waiver does contain visual monitoring requirements, but those have only been in place for one year, and as such, are insufficient to draw conclusions regarding implementation results.</p> <p>The Water Board has no information indicating that the existing timber waiver and its conditions have prevented any fuel reduction project from taking place.</p>
SFL et al-22	The Water Board has not issued separate waste discharge requirements for any vegetation management activity since the adoption of the 2003 Timber Waiver. All vegetation management activities that the Water Board has regulated have been under the Timber Waiver. To our knowledge, most have complied with the waiver conditions, or have taken immediate corrective actions to come into compliance once notified of any non-compliance with waiver conditions.
SFL et al-23	Please see responses SFL et al-1, 2, and 12. The proposed project requires the TRPA to implement its regulatory program as necessary to ensure compliance with permits and applicable regulations. Because the TRPA and the Water Board are mandated and authorized to provide the same level of protection for water quality in the Tahoe Basin, and do so through virtually the same regulatory mechanisms – adoption of water quality standards, waste discharge prohibitions, and taking enforcement actions to attain and maintain federal, state and local water quality standards, and beneficial uses, the waiver is consistent with beneficial use protection offered by the existing (2007) Timber Waiver.
SFL et al -24	The CEQA document does not discuss these items in detail because they are not affected by the project. The Water Board's and TRPA's efforts to meet Basin Plan objectives, including any future TMDL load or wasteload allocations, or TRPA's threshold updates, will proceed unaffected by the MOU. See also response SFL et al-10.
SFL et al-25	<p>We do not agree that the project description is misleading. Page 1 of the draft Initial Study states, "The Water Board is considering the adoption of a resolution waiving the filing of a report of waste discharge and waste discharge requirements for discharges associated with vegetation management activities, and authorizing the Water Board's Executive Officer to enter into an MOU with Executive Director of the TRPA. The MOU will designate TRPA as the lead agency for permitting, review, and enforcement for vegetation management activities in the Lake Tahoe Region, with certain conditions." This accurately represents the project. One of the key conditions is that vegetation management activities are effectively regulated by the TRPA. Feedback mechanisms are built into the MOU to ensure the Water Board and TRPA communicate on the effectiveness of the MOU is protecting water quality. In addition, please see responses SFL et al-1 and 12.</p> <p>Regarding the TRPA regulatory procedures for vegetation management, please see response SFL et al-1 and 15.</p>
SFL et al-26	Please see response SFL et al-1. Specific procedures for how TRPA will address monitoring, steep slopes, discharge prohibition exemptions and SEZs are contained in its Code of Ordinances and are essentially the same as the Water Board's. Additional detail will be added to the Initial Study to outline the similarities in regulatory provisions for vegetation management activities.
SFL et al-27	We disagree that the proposed project is a component of a larger project (i.e., implementation of 68,000 acres of fuel reduction activities). As stated in the Initial Study, the fuel reduction treatments were identified and prioritized prior to consideration of this proposed project. Implementation of the Vegetation Management MOU does not change the scope, methods, number or extent of fuels reductions projects proposed. The regulation of these projects will take place under the parallel authority of TRPA, subject to the terms of the MOU. The MOU does not alter or weaken the need to

	<p>complete required environmental reviews, obtain needed permits, or submit plans to carry out the fuels reduction projects.</p> <p>TRPA's procedures for implementing the waiver and MOU are included in TRPA's Code of Ordinances.</p>
SFL et al-28	Please see response SFL et al-27. The Water Board's role in the MOU is specified in Paragraph Nos. 1 through 17 of the draft MOU. These findings were taken into account in considering the level of impacts the proposed project may have.
SFL et al-29	Projects containing the attributes described in Paragraph No. 9 of the proposed MOU may proceed under the terms of the waiver and MOU, as long as the project complies with TRPA's regulations (including exemption criteria for discharge prohibitions). These regulations are the same as the Water Board's. Under the conditions of the existing Timber Waiver, these types of projects were not prohibited, but were subject to additional mitigation measures to ensure compliance with the Basin Plan. As TRPA regulations are essentially the same as those in our Basin Plan, projects with these attributes must also demonstrate compliance with TRPA's regulations, including that impacts are mitigated.
SFL et al-30	TRPA may grant exemptions to those projects that meet the eligibility criteria for an exemption, just as the Water Board may. TRPA's exemption criteria are essentially the same as the Water Board's. Therefore, any project that receives an exemption to discharge prohibitions under the MOU will not be in violation of either agency's discharge prohibitions.
SFL et al-31	The proposed project does not provide any exemptions from discharge prohibitions. As outlined in finding 6, the agency issuing a permit will be solely responsible for approval of exemptions to prohibitions relating to SEZ disturbance. Granting of such exemptions cannot be delegated to another agency, and exemptions shall be considered in accordance with the TRPA's Code of Ordinances or the Lahontan Basin Plan. No categorical exemption is proposed.
SFL et al-32	Please see response SFL et al -1. TRPA will implement its regulatory authority consistent with its statutory obligations, as it currently does. TRPA's Code of Ordinances contains essentially the same regulatory provisions regarding vegetation management and water quality protection as the Water Board's. Even if TRPA makes changes to its future regulatory approach (as is implied by the commenter and referenced exhibits), it cannot make changes that will result in violations of its statutory obligations or its thresholds, nor would it be appropriate to analyze that possibility under CEQA.
SFL et al-33, 34	We agree that <u>absent effective regulation</u> , vegetation management activities have the potential for significant impacts to water quality and SEZ habitat. This is why the waiver and MOU are conditional, and the MOU is predicated on TRPA's effective application of its parallel regulatory authority to avoid, minimize or mitigate such impacts. The MOU contains feedback mechanisms to allow the Water Board to remain informed on the effectiveness and protectiveness of the waiver and MOU, and make changes, or terminate the MOU (for an individual project, or in its entirety).
SFL et al-35	Please see response SFL et al -1.
SFL et al-36	<p>Chapter 4, Appendix A of TRPA Code of Ordinances does not require fuel reduction projects to be subject to a public process or Governing Board approval. However, the Executive Director has the discretion to require any project to go through the public process and Governing board approval.</p> <p>Vegetation management activities covered under the Water Board's Timber Waiver do not typically undergo a public review process or Water Board approval. Applications are reviewed and granted coverage under the waiver by Water Board staff, similar to TRPA's exempt, qualified exempt, or tree removal permit process.</p>
SFL et al-37	Please see response SFL et al -3, regarding the relationship of TFFT to TRPA and the Water Board's regulation of vegetation management activities.

SFL et al-38	According to the CEQA guidelines (14 Cal Code Reg. section 15063(d)(1) through (6), an Initial Study is not required to included an alternatives analysis. According to the CEQA guidelines (14 Cal Code Reg. section 15071), a Negative Declaration is not required to include an alternative analysis. The Initial Study does include a discussion of the purpose of and need for the project, as well as a discussion of the potential environmental impacts of the project. The contents of the Initial Study and Negative Declaration are fully consistent with CEQA.
SFL et al-39	The Initial Study contains a cumulative impacts discussion (see CEQA factor XVII(d) [Mandatory Findings of Significance]). As stated in this section: "the physical environment of the MOU project area (the Lake Tahoe Region) will not be changed from current conditions by the adoption of the MOU. Without substantial, or potentially substantial, adverse changes in the physical conditions within the area affected by the project, the project does not have the potential to create cumulatively considerable impacts. This finding is supported by the analysis in Initial Study as a whole.
SFL et al-40	Please see response SFL et al -1 and 39.
SFL et al-41	Please see response SFL et al -1 and 39. Regarding TRPA's permitting approach, please see response SFL et al -15.
SFL et al-42	The Initial Study does not discuss any mitigation needed to ensure the project does not result in significant impacts, because the Initial Study finds that no significant effects are foreseeable. If no significant effects are foreseeable, then no mitigation is needed. The finding that no significant effects are foreseeable is based on substantial evidence in the record as a whole, including facts and reasonable assumptions predicated upon facts. The facts supporting this finding are outlined in the Initial Study and response SFL et al -1, above.
SFL et al -43	Please see responses SFL et al -1, 38, 42.
SFL et al-44	The Water Board has no plans regarding the "consideration of TRPA's permit process." We disagree that our action constitutes "unlawfully segmenting the necessary environmental analysis into discrete actions." Please see response SFL et al -39.
SFL et al-45	<p>Please see response SFL et al -1.</p> <p>Regarding evidence that TRPA is contemplating allow projects on steep slopes: as stated in the commenter's exhibit 1 (page 509, agenda item no. XIV.A.):</p> <p style="padding-left: 40px;">"The TRPA will begin discussions with partner agencies on Code changes to allow equipment use on slopes greater than 30%."</p> <p>The process of revising the TRPA's Code of Ordinances (which would also require changes to the 208 plan) would involve public review and comment, including by the Water Board, and approval and certification by the US EPA. No proposal for allowing equipment use on steep slopes has been circulated; therefore, attempting to predict what conditions such activities may be allowed under would be speculative. Currently, the TRPA does not allow equipment on slopes greater than 30%. In the event that TRPA revised its Code to allow such activities, the Water Board will participate in the review and approval process to ensure such revisions are protective of water quality. The provisions of the MOU and waiver allow the Water Board to retain its regulatory authority over any project that is not effectively regulated by the TRPA, including due to any future changes to TRPA's regulations.</p>
SFL et al-46	Please see responses SFL et al-14. Regarding TMDLs, please see response SFL et al-10.
6. Jack Landy, Lake Tahoe Basin Coordinator, US Environmental Protection Agency (Letter Code EPA)	

EPA-1	<p><u>Regarding provisions for monitoring in the MOU:</u> The proposed project is consistent with California Water Code section 13269 regarding monitoring requirements. TRPA, as outlined in its Code of Ordinances (Chapter 71, section 71.4.c. viii and 71.4.I) conducts or requires monitoring for tree removal projects that may pose a threat to water quality, including those proposing innovative equipment use in SEZs, and those involving substantial tree removal. These policies are consistent with the requirements of CWC section 13269, which provides that "monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions, and the state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality."</p> <p>We will add detail to the Initial Study to clarify that the waiver and MOU are consistent with CWC section 13269, regarding monitoring requirements.</p> <p><u>Regarding specific requirements for BMPs to mitigate or eliminate project impacts:</u> TRPA's 208 Plan <i>Handbook of Best Management Practices</i> (Vol. II) incorporates the silvicultural BMPs from the USFS's statewide BMP handbook. In addition, the 208 Plan (Vol. I, page 148) includes the following control measures for tree removal on federal, State, and private land:</p> <ul style="list-style-type: none"> •TRPA approval of timber harvesting shall require application of BMPs to the project area as a condition of approval. Application of BMPs is site specific. The Handbook of Best Management Practices identifies the various practices which may apply. •All logging roads and skid trails shall be constructed and maintained in accordance with the TRPA Code and BMP Handbook, and BMPs shall be installed on all skid trails, landings, and roads prior to seasonal shutdown. Design, grade, tree felling in the right-of-way, slash cleanup, width, maintenance, and type of roads and trails shall meet TRPA standards, as shall cross-drain spacing. <p>In addition, the TRPA Code sets requirements for timber harvesting. In cases of substantial tree removal, the applicant is required to submit a harvest plan or tree removal plan prepared by a qualified forester. The plan shall set forth prescriptions for tree removal, water quality protection, vegetation protection, reforestation, and other considerations, and shall become part of the project's conditions of approval.</p> <p><u>Regarding provisions in the draft MOU for agency or public review on future TRPA or Lahontan vegetation management permits:</u> The MOU does contain several provisions for agency review to ensure that the MOU is effective in meeting its objectives. These provisions include: notification requirements if a third party violates the term of any permit or project authorization; "triggers" for more complex projects that may benefit from interagency consultation; yearly information exchange regarding the projects that each agency has authorized to proceed under the MOU; and twice yearly communication, training, and technical review to discuss any problems, issues or opportunities encountered during the administration and implementation of the MOU. These safeguards provide opportunities for adaptive management and communication necessary to ensure the objectives of the MOU are met, and that projects are effectively regulated under the waiver and MOU.</p> <p>The Water Board and the TRPA are both responsible for protecting water quality and beneficial uses of waters of the State within the Lake Tahoe Region by regulating activities which may have an adverse effect on these resources. The TRPA is mandated by Public Law (P.L.) 96-551 (the Tahoe Regional Planning Compact), to protect the quality of water at Lake Tahoe and has adopted thresholds and ordinances aimed specifically at protecting and improving water quality. The TRPA is the designated water quality planning agency under Section 208 of the Clean Water Act. The TRPA's "208 Plan" was certified by the states of California and Nevada and the USEPA, and establishes control measures to protect water quality including a tree removal permit system, stream environment zone and wetland protection policies, vegetation protection and management provisions, prohibitions against fill in 100-year floodplains and permanent disturbance in stream environment zones, and use of Best Management Practices (BMPs).</p> <p>The TRPA's Regional Plan also provides for attaining and maintaining the strictest water quality standards established by federal or state agencies as required by Article 5, section 5(d) P.L. 96-551,</p>
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and the TRPA Code of Ordinances incorporates water quality standards as equally restrictive as those contained in the Lahontan Basin Plan. In 1989, as part of its certification of TRPA's 208 plan, the State Board directed the Lahontan Water Board to incorporate the most appropriate provisions of the 208 plan into the Lahontan Basin Plan, and this was done in the mid-1990s. This demonstrates that the regulatory provisions for water quality control between the two agencies are virtually the same. Additional detail will be added to the Initial Study to discuss the similarities in regulatory provisions for vegetation management activities.

In addition, Chapter 5 of the Basin Plan (applicable to the Lake Tahoe Region) recognizes the implementation of the water quality control programs discussed in that chapter is a bi-state, interagency effort. As stated in Chapter 5 of the Basin Plan, "many of the control measures can best be implemented by local governments or the TRPA" This waiver and MOU are consistent with that philosophy. The Basin Plan also recognizes that the Water Board and TRPA implement their water quality plans in a complementary manner, and MOUs are an effective tool to increase coordination and avoid duplication of effort (page 5-4).

As such, the Water Board proposes to rely on the parallel authority of the TRPA permit and oversee vegetation management activities in the project area. TRPA has the legal mandate and statutory authority to perform these functions, as described above and in the waiver (findings 7 and 8). The waiver and MOU are conditional, in that projects must be effectively regulated by the TRPA, including issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. If the Water Board finds that projects proceeding under the waiver and MOU are not effectively regulated, the Water Board has several options: 1) the Executive Officer can recommend that the Water Board adopt Waste Discharge Requirements for any of the types of activities, or individual projects, identified in the MOU; 2) the Executive Officer can require that a project proponent seek coverage under the Lahontan Timber Waiver; or 3) the waiver and MOU can be terminated. Further, the waiver and MOU do not limit the authority of either agency to ensure compliance with its environmental standards or to take enforcement action.

The waiver does not contain specific details on TRPA's procedural approach to fulfilling its mandate to protect water quality, or on how TRPA intends to regulate vegetation activities in the future. Although we do not believe this level of detail is needed to demonstrate the legal validity or environmental protectiveness of the waiver and MOU, it is the Water Board's understanding the TRPA's basic procedural approach will protect water quality and not adversely affect beneficial uses. The Water Board would not have sought an MOU with TRPA if it believed that TRPA would not have an adequate procedural approach to protect water quality. This belief is further supported by the effectiveness of the existing 2003 MOU between the Water Board and TRPA, which outlines primary and secondary permitting and review responsibilities for construction, BMP retrofit, and other projects. In addition, as noted above, the Water Board believes that there are several safeguards to ensure the MOU is effective. And finally, the Water Board has many options and opportunities to ensure projects are effectively regulated.